§ 220.105 Initial evaluation of a previous disability.

(a) In some cases, the Board may determine that a claimant is not currently disabled but was previously disabled for a specified period of time in the past. This can occur when—

(1) The disability application was filed before the claimant's disability ended but the Board did not make the initial determination of disability until after the claimant's disability ended; or

(2) The disability application was filed after the claimant's disability ended but no later than the 12th month after the month the disability ended.

(b) When evaluating a claim for a previous disability, the Board follows the steps in § 220.100 to determine whether a disability existed, and follows the steps in § 220.180 to determine when the disability ended.

Example 1. The claimant sustained multiple fractures to his left leg in an automobile accident which occurred on June 16, 1982. For a period of 18 months following the accident the claimant underwent 2 surgical procedures which restored the functional use of his leg. After a recovery period following the last surgery, the claimant returned to work on February 1, 1984.

The claimant, although fully recovered medically and regularly employed, filed an application on December 3, 1984 for a determination of disability for the period June 16, 1982 through January 31, 1984. The Board reviewed his claim in January 1985 and determined that he was disabled for the prior period which began June 16, 1982 and continued through January 31, 1984. A disability annuity is payable to the employee only for the period December 1, 1983 through January 31, 1984.

An annuity may not begin any earlier than the 1st of the 12th month before the month in which the application was filed (See part 218 of this chapter for the rules on when an annuity may begin).

Example 2: The claimant is disabled using the same medical facts disclosed above, beginning June 16, 1982 (the date of the automobile accident). The claimant files an application for a disability annuity, dated December 1, 1983. However, as of February 1, 1984, and before the Board makes a disability determination, the claimant returns to full-time work and is no longer considered disabled. The Board reviews the claimant's application in May 1984 and finds him disabled for the period June 16, 1982 through January 31, 1984. A disability annuity is payable to the employee from December 1, 1982 through January 31, 1984. (See part 218 of this chapter for the rules on when an annuity may begin).

Subpart I—Medical Considerations

§ 220.110 Medically disabled.

(a) "*Medically disabled*." The term "medically disabled "refers to disability based solely on impairment(s) which are considered to be so medically severe as to prevent a person from doing any substantial gainful activity. The Board will base its decision about whether the claimant's impairment(s) is medically disabling on medical evidence only, without consideration of the claimant's residual functional capacity, age, education or work experience. The Board will also consider the medical opinion given by one or more physicians employed or engaged by the Board or the Social Security Administration to make medical judgments. The medical evidence used to establish a diagnosis or confirm the existence of an impairment, and to establish the severity of the impairment includes medical findings consisting of signs, symptoms and laboratory findings. The medical findings must be based on medically acceptable clinical and laboratory diagnostic techniques. If the claimant has more than one impairment, but none of the impairments, by themselves, is medically disabling, the Board will review the signs, symptoms, and laboratory findings of all of the impairments to determine whether the combination of impairments is medically disabling. In general, impairments that the Board considers to be medically disabling are:

(1) Permanent;

(2) Expected to result in death; or

(3) Have a specific length of duration.

(b) *Diagnosis of impairments.* A diagnosis of a particular impairment is not sufficient for a finding of medical disability, unless the diagnosis is supported by medical findings that are based on medically acceptable clinical and laboratory techniques.

(c) *Addiction to alcohol or drugs.* If a claimant has a condition diagnosed as addiction to alcohol or drugs, this condition will not, by itself, be a basis for determining whether the claimant is, or is not, disabled. As with any other

medical condition, the Board will decide whether the claimant is disabled based on symptoms, signs, and laboratory findings.

[74 FR 63601, Dec. 4, 2009]

§ 220.111 [Reserved]

§ 220.112 Conclusions by physicians concerning the claimant's disability.

(a) *General.* Under the statute, the Board is responsible for making the decision about whether a claimant meets the statutory definition of disability. A claimant can only be found disabled if he or she is unable to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. (See § 220.28). A claimant's impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques. (See § 220.27). The decision as to whether a claimant is disabled may involve more than medical considerations and the Board may have to consider such factors as age, education and past work experience. Such vocational factors are not within the expertise of medical sources.

(b) *Medical opinions that are conclusive.* A medical opinion by a treating source will be conclusive as to the medical issues of the nature and severity of a claimant's impairment(s) where the Board finds that (1) it is fully supported by medically acceptable clinical and laboratory diagnostic techniques and (2) it is not inconsistent with the other substantial medical evidence of record. A medical opinion that is not fully supported will not be conclusive.

(c) *Medical opinions that are not fully supported.* If an opinion by a treating source(s) is not fully supported, the Board will make every reasonable effort (i.e., an initial request and, after 20 days, one follow-up request) to obtain from the claimant's treating source(s) the relevant evidence that supports the medical opinion(s) before the Board makes a determination as to whether a claimant is disabled.

Example: In a case involving an organic mental disorder caused by trauma to the head, a consultative physician, upon interview with the claimant, found only mild disorientation as to time and place. The claimant's treating physician reports that the claimant, as the result of his impairment, has severe disorientation as to time and place. The treating physician supplies office notes which follow the course of the claimant's illness from the date of injury to the present. These notes indicate that the claimant's condition is such that he has some "good days" on which he appears to be unimpaired, but generally support the treating physician's opinion that the claimant is severely impaired. In this case the treating physician's opinion will be given some weight over that of the consultative physician.

(d) *Inconsistent medical opinions.* Where the Board finds that the opinion of a treating source regarding medical issues is inconsistent with the evidence of record, including opinions of other sources that are supported by medically acceptable clinical and laboratory diagnostic techniques, the Board must resolve the inconsistency. If necessary to resolve the inconsistency, the Board will secure additional independent evidence and/or further interpretation or explanation from the treating source(s) and/or the consultative physician or psychologist. The Board's determination will be based on all the evidence in the case record, including the opinions of the medical sources. In resolving an inconsistency, the Board will give some extra weight to the treating source's supported opinion(s) which interprets the medical findings about the nature and severity of the impairment(s).

Example: In a case involving arthritis of the shoulder, where the X-rays confirm bone destruction, the examinations indicate minimal swelling and inflammation, but the treating source supplies evidence of greater restriction in the range of motion than found by the consultative physician, the Board will ask the treating source for further interpretation of the range of motion studies. If the treating source supplies a reasonable explanation. e.g., that the individual's condition is subject to periods of aggravation, the treating source's explanation will be given some extra weight over that of the consultative physician.